FIRST REVISED CONTRACT

BRODERBUND SOFTWARE, INC. (NOT FINAL)

SOFTWARE DEVELOPMENT AND PUBLISHING AGREEMENT

This Agreement, dated April __, 1988, is made between Broderbund Software, Inc., a Delaware Corporation doing business at 17 Paul Drive, San Rafael, CA 94903 ("Publisher"), and The Point Foundation, whose address is 27 Gate Five Road, Sausalito, CA 94965 ("Author").

RECITALS

WHEREAS,

a. Author possesses expertise in the field of software development and has developed or is developing the Work described below;

b. Publisher possesses expertise and is engaged in the business of software publishing, marketing and distribution, and desires to obtain the rights transferred by this Agreement for the purpose of publishing the Work and any Derivative Works;

c. Publisher wishes to develop an ongoing, long-term relationship with Author, for the purpose of publishing future works and supporting Author in Author's creative and technical growth and development;

NOW, THEREFORE, the parties agree as follows:

AGREEMENTS

1. The Work and Derivative Works.

1.01 Work. The work which is the subject of this Agreement is a computer software product tentatively entitled The Whole Earth Learning Disc, CD-ROM version, and includes properly commented and documented source code (the "Work").

1.02 Derivative Works. A Derivative Work ("Derivative Work") shall be defined as (a) a conversion of the Work to enable it to function on additional target machines, and (b) revisions, enhancements and updates intended to extend the functionality of the Work, add features or otherwise improve the functioning and performance of the Work.

2. Delivery, Acceptance and Source Code and Documentation.

2.01 Delivery. Author shall deliver each deliverable item defined in Appendix A of this Agreement to Publisher, which

deliverable items shall conform to the specifications set forth in Appendix A to this Agreement, in accordance with the delivery schedule set forth therein. Author will give Publisher written notice of each delivery, and no delivery shall be considered complete until Publisher has received written notice and verified receipt of the deliverable item.

2.02 Acceptance. The deliverable item(s) shall be deemed accepted by Publisher upon Publisher's written notice to Author that the deliverable item(s) conform to the specifications set forth in Appendix A. In the event that the deliverable item(s) do not conform to the specifications set forth in Appendix A, Publisher shall give Author written notice of the aspects in which the deliverable item is deficient; Author shall have a reasonable amount of time, which shall in no event exceed thirty (30) days without the written consent of Publisher, to correct such deficiencies. If Publisher gives notice in the manner specified above and the changes submitted by Author do not cause the deliverable item to conform to the specifications set forth in Appendix A, or no changes are submitted within a reasonable time as defined above, then Publisher may, at its sole option, either (a) terminate this Agreement by giving written notice to Author, or (b) procure the services of others to complete the Work or Derivative Work containing the deliverable item and deduct the costs (including but not limited to royalties and development fees) from any payments due to Author.

2.03 Source Code and Documentation. Upon Publisher's acceptance of the final code of any version of the Work or Derivative Work, Author shall deliver to Publisher one clearly legible written copy and one magnetic media (as specified by Publisher) copy of properly commented and documented source code, as well as one clearly legible written copy of all documentation described in Appendix A.

3. Grant of Rights. Author hereby grants Publisher, its successors and assigns the exclusive worldwide right to manufacture, reproduce, market and distribute the Work and Derivative Works. Author grants Publisher the right to use any trademark, label or copyright associated with the Work or Derivative Works, and to license the Work and Derivative Works and associated trademarks, labels and copyrights for use in optical storage media, such as CD-ROM format, throughout the world. Further, Author hereby grants and assigns to Publisher for its use any and all rights now or hereafter protected by the copyright laws (common and statutory) of the United States, foreign countries, and international copyright conventions with respect to the Work and Derivative Works. Further, Author grants Publisher the right to produce related products as marketing tools for the Work and Derivative Works without compensation therefrom to Author.

4. Royalty and Development Fees

4.01 Amount. Publisher shall pay Author as royalties the following percentages of Sales Receipts (as defined in Paragraph 4.03 below), after subtracting from any such royalties all but $12,500 of the development fees described in Appendix A of this Agreement:

Work and Derivative Works by Author:	15%
Derivative Works by Publisher for Similar Computers with Author's support.	7%
Derivative Works by Publisher for Nonsimilar Computers with Author's support.	5%

For the purposes of this Paragraph 4.01, "Units" shall be considered to be copies of the Work or Derivative Works by Author sold by Publisher, excepting promotional copies, reviewer copies and backup or replacement copies.

4.02 Development Fee. Publisher shall pay Author a development fee upon completion of certain deliverable items, as more specifically described in Appendix A hereto, and according to the schedule contained in Appendix ~~B~~ of this Agreement.

App. A

4.03 Sales Receipts. Sales Receipts ("Sales Receipts") shall be defined as actual cash receipts derived from the Sale or License of the Work or Derivative Works, less the following amounts:

a. Any cash, trade or promotional discounts;

b. Sales or use taxes, excise taxes, and value-added taxes for licensing (where applicable);

c. Duties;

d. Returns, including a reserve for future returns;

e. Price protection allowances;

f. Any insurance, packing or shipping charges, to the extent the same are actually included in the invoice price.

g. Any amounts received by Publisher for promotional, backup or replacement copies of the Work or any Derivative Works or Derivative Products.

h. Notwithstanding the foregoing, for purposes of calculating royalties, sales receipts from sales made by Publisher directly to end users (including, but not limited to, schools and consumers) through the mails or otherwise ("Direct Sales") shall be calculated by multiplying the actual number of units sold

through Direct Sales times the per unit price charged to Publisher's largest volume distributor.

5. Modifications, Enhancements, Revisions and Conversions

Subject to the provisions of this section 5, Publisher shall have the right to make any technical modification to the Work or any Derivative Work that it deems necessary. Publisher agrees to release an Access Update once every 18 months, and will pay to Author an additional sum as an advance against royalties to be agreed upon by the parties to develop the Access Update. For purposes of this section, an Access Update shall be defined as an update of new addresses, phone numbers, and product information for entities already in the then-existing product.

Once every three years, Author shall have the right to request in writing that Publisher publish an Editorial Update to the Work or any Derivative Work. Publisher shall have the right of first refusal to publish, or decline to publish, the requested Editorial Update. If Publisher agrees to publish the Editorial Update, the time during which Publisher must release an Access Update or an Editorial Update shall commence upon the date on which the Editorial Update is released. By way of example, should Publisher publish an Editorial Update, Publisher shall release an Access Update to the Editorial Update within 18 months of the release of the Editorial Update. If Publisher declines to publish the Editorial Update, Author shall have the opportunity to find another publisher to publish the Editorial Update, at which time this Agreement shall terminate, and Publisher will return all rights to Author, except that Publisher may continue to manufacture, market, and distribute its current version of the Work and any Derivative Works. If Author is unable to find another publisher to publish at a comparable price the Editorial Update, Publisher shall continue as Publisher.

5.01 Derivative Works. Publisher retains the exclusive rights as described in Paragraph 3 of this Agreement with respect to any Derivative Works which are developed or the rights to which are acquired by Author during the term of this Agreement. If Publisher desires to develop a Derivative Work, (excepting only those versions of the Work created by third parties, under licenses granted by Publisher, expressly for the purpose of utilizing said license), Publisher shall notify Author that Publisher desires to do so and define the proposed schedule for such work. Author may then either (a) agree to create the Derivative Work according to the proposed schedule, or (b) state that he/she is unwilling to do so. If Author fails within thirty (30) days of receipt of notice to agree to create the Derivative Work, Author will be deemed to have waived his/her right to create the Derivative Work. If Author develops or intends to develop a Derivative Work (or acquires or intends to acquire the rights to same), Author will promptly inform Publisher of such intention and deliver to Publisher copies of any such Derivative Work(s) as may have been developed.

5.02 Derivative Products. A Derivative Product ("Derivative Product") shall be defined as a microcomputer software product which is an expanded part of the Work or an entirely new section of the Work. By way of example, a software product which describes and expands upon the entries in the Work which deal with music would be The Whole Earth Music Disc and a Derivative Product. Author hereby grants Publisher a right of first refusal to publish all Derivative Products and Author agrees not to contract with another publisher without first offering to Publisher the right to publish, on the same terms and conditions as offered to the other publisher, the Derivative Product. In the event that Publisher declines to publish the Derivative Product, and Author contracts with another publisher to publish the Derivative Product, and the Derivative Product uses the source code or the user interface used in the Work, Author shall pay to Publisher a royalty of 15% of any fees or advances paid to Author as a result of the publication of the Derivative Product.

not clear that this ~~reserves~~ addresses fact that much of user interface was not developed by BB - we had verbally agreed to try to i.d. this more specifically.

does this include royalty?

Royalty % is too high + unlimited!

6. Accounting. Publisher shall make monthly accounting of Sales Receipts to Author and pay royalties on said receipts by the fifteenth (15th) day of the following month. Author shall have the right to examine Publisher's books for the sole purpose of verifying the accuracy of such monthly accounting, at Author's own expense, during normal business hours, no more frequently than twice a year.

7. Term.

7.01. Basic Term. The term of this Agreement shall continue until it is terminated by either or both parties in the manner and under the conditions defined elsewhere in this Agreement.

7.02. Cessation of Publication. If Publisher at any time ceases to produce and to market the Work and all Derivative Works, Author may give Publisher written notice that Author wishes to terminate this Agreement. If Publisher does not recommence production and marketing of the Work or Derivative Work within sixty (60) days of such notice, Author may, by written notice to Publisher, terminate this Agreement as provided for in Paragraph 12.02.

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8. Error Corrections. If at any time during the term of this Agreement technical defects which impair the proper functioning of the Work are discovered in the code, data or other contents of the Work or Derivative Work by Author, Publisher shall notify Author of such defects in writing. If Author fails to repair such defects within a reasonable period of time (not to exceed thirty (30) days after such notice), Publisher may contract with one or more third parties to have such defects corrected and may withhold sums expended for said purpose from Author's royalty payments.

9. Warranties. Author warrants that Author possesses full power and authority to make this Agreement; that the Work is not in the public domain; that the Work is original with Author in every respect; that neither the Work nor any part thereof has previously been published in this media; and that Author has not heretofore granted any rights to the Work to any other person or persons. Author agrees to defend and indemnify Publisher for and against all claims arising from the breach of any warranty given herein, and against all claims of patent, trade secret and copyright infringements and any related claims such as unfair competition, by third parties arising from the Work, provided that Publisher gives Author prompt written notice of any such claim. If Author breaches this condition, Publisher may withhold payments due to Author under this or any other agreement with Publisher until Publisher is indemnified for the cost of defending or settling any infringement claim or for the payment of any judgment arising from an infringement claim. The provisions of this Paragraph 9 shall survive any termination of this Agreement.

10. Publishing the Work. Publisher shall use best efforts to publish the Work at its own expense with reasonable promptness and shall make all reasonable efforts to market the Work to the parties' mutual benefit. Publisher shall have the sole right to determine the manner, style or design of publication or marketing of the Work and any Derivative Works, the title under which the Work and any Derivative Works will be published, and the price at which the Work and any Derivative Works shall be sold or licensed. Publisher does not guarantee to Author that Publisher's marketing efforts will necessarily be equivalent to those efforts expended on any other product published by Publisher. Publisher and Author both reserve the right to develop and/or publish products similar to the Work in the future, so long as such products do not violate the copyright in the contents, code or audiovisual effects contained in or presented by the Work or Derivative Works.

11. Copyright, Trademarks and Attribution.

11.01. Copyright. Publisher agrees to place a copyright notice upon the package and upon the software title screen. In the case of the Work or any Derivative Work by Author this notice shall read:

Software copyright 198__, (Author).

In the case of any Derivative Work by Publisher this notice shall read:

Software copyright 198__, (Author and Publisher).

OK does not address our interest in use what about whole Earth

11.02. Trademarks. Any trademarks used by Publisher to name or identify the Work shall be the exclusive property of Publisher.

11.03. Attribution. Publisher desires to promote Author as a creative talent in the field of computer software, and agrees to place Author's name and display Author's relevant trademark(s) on the product box, title page and in the documentation consistent with Publisher's established practice. Author shall have a right of approval on all biographical material and photographs of Author not provided by Author. Author hereby grants Publisher the right to utilize Author's likeness, photograph and image in Publisher's packaging, documentation and promotional materials relating to the Work or Derivative Works.

12. Termination

12.01. Termination for Cause. Either party may terminate this Agreement if the other party has committed a default hereunder and such default has not been cured within thirty (30) days of written notice to the other party, except that if there is a bonafide dispute as to the amount of royalties to be paid hereunder, such disputes shall be submitted to arbitration by the American Arbitration Association in San Francisco, CA, and Author may not terminate this Agreement unless and until Publisher has failed to pay the amounts due with interest at the lawful rate as specified in the arbitrator's award. Claims for damages arising out of a breach of this contract shall survive any termination.

12.02. Resolution of Termination. In the event of any termination of this Agreement after publication, (a) Author may retain all development fees paid prior to the date of the termination, (b) Publisher's obligation to pay Author royalties from Sales Receipts and Licenses for the Work and any Derivative Works or Derivative Products shall continue, (c) Publisher shall have no further rights in the Work or Derivative Works, (d) any licensing agreements concerning the Work or Derivative Works entered into by Publisher with third parties shall continue in full force and effect, and royalties therefrom shall be paid pursuant to the terms of this Agreement, (e) Publisher will have the right to continue to execute Sales of any copies of the Work or Derivative Works that are in the inventory of Publisher (or in production) at the time of termination, and Publisher will continue to pay Author royalties based upon Sales Receipts from said sales, as specified in Paragraph 4.01.

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12.03. Termination During Development Period. Publisher cannot guarantee that in the volatile software marketplace any potential product will remain marketable during its entire development period. If for any reason Publisher in its sole judgment elects not to publish the Work, Publisher may terminate this Agreement at any time prior to Publisher's acceptance of the completed Work by giving written notice to Author. Alternatively, Publisher may modify the specifications contained in Exhibit A so as to render the Work more commercially acceptable. If, in the case of a

Derivative Work, for any reason Publisher in its sole judgment elects not to publish the Derivative Work, Publisher may cancel its obligation to pay additional development fees to Author for development of that Derivative Work at any time prior to Publisher's acceptance of the completed Derivative Work by giving written notice to Author; such cancellation of development fees for a Derivative Work shall not in any way affect any other provision of this Agreement.

13. Proprietary Information. Author acknowledges that Author may be furnished with or may otherwise receive or have access to information which relates to Publisher's past, present or future products, software, research, development, inventions, processes, techniques, designs or other technical information and data, marketing plans, etc. (the "Proprietary Information"). Author agrees to preserve and protect the confidentiality of the Proprietary Information and all physical forms thereof, whether disclosed to Author before this Agreement is signed or afterward, including the terms of this Agreement. In addition, Author shall not disclose or disseminate the Proprietary Information for his/her own benefit or for the benefit of any third party. The foregoing obligations shall not apply to any information which (a) is publicly known; (b) is given to Author by someone else who is not obligated to maintain confidentiality; or (c) Author had already developed prior to the day this Agreement is signed, as evidenced by documents. Author shall not take nor cause to be taken any physical or electronic forms of Proprietary Information from Publisher's offices (nor make copies of same) without Publisher's written permission. Within three (3) days after the termination of this Agreement (or any other time at Publisher's request), Author shall return to Publisher all copies of Proprietary Information in tangible form. Notwithstanding any other provisions of this Agreement, the requirements of this Paragraph 13 shall survive any termination of this Agreement.

14. Author's Free Copies. Author shall be entitled to twenty-five (25) free copies of the Work and may purchase additional copies from Publisher in reasonable quantities at forty-five percent (45%) of the suggested retail price. ~~Author shall have the right to sell reasonable quantities (not to exceed [illegible] in any 12 month period) directly to its customers.~~ re per unit price charged to Publishers larger volume distributor. ? worse! ~~Bad~~ Stupid!

re 55% discount

4/4 - delete per JBeale issue is not enforceable vs distributors

15. Entire Agreement. Except for the Equipment Loan Agreement described in section 16, this Agreement contains the entire agreement between the parties and supersedes any prior agreement. This Agreement may be changed only by mutual agreement in writing.

16. Loan of Equipment. Publisher agrees to provide to Author three Macintosh SE microcomputers, and one 80 Mb hard drive for use by Author during the term of this project. The equipment

need to do this -

shall remain the property of Publisher and will be returned upon completion of the project. Author agrees to execute Publisher's standard equipment loan agreement upon delivery of the equipment.

17. Governing Law, Assignment and Attorneys' Fees. This Agreement shall be governed by the laws of the State of California. Although Author may not assign obligations under this Agreement without Publisher's prior written consent, this Agreement shall be binding upon the personal representatives and assigns of Author and the successors and assigns of Publisher. In the event of any legal action between the parties arising from or relating to this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees from the other party.

18. Notice. Any notice required or permitted to be given by the provisions hereof shall be conclusively deemed to have been received by a party hereto on the day it is delivered to such party at the address indicated above in this Agreement (or at other such address as such party shall specify to the other party in writing) by US Mail with Acknowledgement of Receipt or by any commercial courier providing equivalent acknowledgement of receipt.

IN WITNESS WHEREOF, the undersigned hereby acknowledge that they have read and understand the terms of this Agreement, including Appendix A (which is hereby included in this Agreement by this reference), and that by signing this Agreement they agree to be bound by all terms, conditions and obligations contained herein.

PUBLISHER
BRODERBUND SOFTWARE, INC.

By:_____

Name:_____

Title:_____

By:_____

Name:_____

Title:_____

AUTHOR
THE POINT FOUNDATION

By:_____

Name:_____

Title:_____

APPENDIX A

MILESTONES AND PAYMENT

MILESTONE	DUE	FEE
1: Signing of Agreement + Milestones	4/15	25000
2: Features list detailed out with target dates attached and agreed upon		
3: First section editorially completed	5/1	9
4: Second, third and fourth sections editorially completed	5/15	9
5: Fifth, sixth and seventh sections editorially completed	6/1	9
6: Eighth, ninth and tenth sections editorially completed	6/15	9
7: Eleventh, twelfth and thirteenth sections editorially completed	7/1	9
8: Documentation and Front Matter completed by Whole Earth and handed off to Broderbund	7/15	10
9: Beta product sent to Quality Assurance	7/15	
10: Final product accepted for release by Broderbund	8/1	$20,000